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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,692	11/17/2003	Meinrad Gotz	2347.001	5376
23405	7590	10/09/2007	EXAMINER	
HESLIN ROTHENBERG FARLEY & MESITI PC			BOOSALIS, FANI POLYZOS	
5 COLUMBIA CIRCLE			ART UNIT	PAPER NUMBER
ALBANY, NY 12203			2884	
MAIL DATE		DELIVERY MODE		
10/09/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/714,692	GOTZ ET AL.
	Examiner	Art Unit
	Faye Boosalis	2884

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 June 2007.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) _____ is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 1-35,44-50,52-56,59-61 is/are allowed.
 6) Claim(s) 36-43,51,57,58 and 62-70 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 17 November 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/18/07</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment submitted 18 June 2007 has been entered.

Response to Arguments

2. Applicant's arguments, see 14-23, filed 18 June 2007, with respect to the rejection(s) of claim(s) 36-43, 51, 57-58 under 35 USC 102 and/or 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of *Schmidt et al (US 6,585,409 B2)* and *Barral et al (US 5,352,039 A)*.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 36-43, 51, 57-58, 62-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Schmidt et al (US 6,585,409 B2)* in view of *Barral et al (US 5,352,039 A)*.

Regarding claims 36, 51, 57-58 and 69-70, Schmidt discloses a method and a radiometer apparatus comprising: focusing IR radiation (3) emitted by a measuring surface by means of a lens (4b) on an IR detector (col. 3, lines 46-63); determining a temperature of the measuring surface (2b) on the basis of a signal supplied by the IR detector (1) (See Fig. 1 and col. 3, lines 19-23 and col. 6, lines 2-5); marking the

measuring surface (2a) by visible light (6) (See Figs. 1 and 2a-2g, col. 3, lines 27-29 and col. 4, lines 4-17); and indicating with the marking at least one of a measurement state. Schmidt is silent with regards to indicating with the marking a change of temperature based upon a determined temperature. Barral discloses a remote temperature and/or temperature difference measuring device comprising: marking a measuring surface and indicating with the marking at least one measured state and a change of temperature based upon the determined temperature (i.e. signal stored in memory corresponding to a particular known temperature) (col. 4, lines 25-col. 5 line 1). Thus, it would have been obvious to a person having ordinary skill in the art to modify Schmidt to determine temperature change, so as to enable carrying out comparisons of temperature in zones which are associated for a desired point of view (i.e. medical) and determine and confirm diagnosis, as taught by Barral et al.

Regarding claims 37-40, Barral discloses wherein an optical axis (i.e. central axis of aperture) is defined by the IR detector (14) and optics, wherein the beam path (28)(29) of the visible light emitted by the light source (18)(19) extends towards the optical axis and the radiometer further comprises deviating means (i.e. mirror) (15) (col. 3, lines 6-8) in proximity of the optical axis and deviate the beam path of visible light (col. 1, lines 54-62, col. 2, line 48-57 and col. 4, lines 58-65). Although Barral is silent with regards the radiometer comprising a prism, it would have been obvious to use a prism, as an alternate to a mirror as described supra, to deviate the light beam at different locations about angles.

Regarding claim 41, Barral discloses a hole (aperture) (4) about the optical axis, which the IR radiation (18)(19) can fall upon the detector (14) (See Fig. 1).

Regarding claim 42-43, although Barral is silent with regards to a second lens and bore where visible light passes the lens, it would have been obvious to one having ordinary skill in the art at the time the invention was made to us a second lens, since it has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art. In re Harza 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Regarding claims 62-63, Schmidt discloses wherein visible indication (markings) comprises visible rotational indication based upon the reading of the IR detector (See Generally Figs. 2A-2D).

Regarding claims 64-65, Schmidt discloses wherein visible indication comprises a visible frequency indication based upon the reading of the IR detector (col. 1, lines 15-24).

Regarding claim 66, although Schmidt nor Barral specifically disclose flashing or flickering of the marking indicator, it would have been obvious a flashing or a flickering of the device would occur since the radiometer provides a visible marking on the measuring surface to be tested.

Regarding claims 67-68, Schmidt discloses varying the marking comprises varying the illumination of the marking (Figs. 2g-2h and col. 4, lines 18-30).

Allowable Subject Matter

5. Claims 21-27, 30-35, 44, 47, 49, 50, 52, 54-56 and 61 were indicated allowable in the Office Action of 6 July 2006.
6. Claims 5 and 15 were object to, as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, in the Office Action of 6 July 2006.
7. Independent claims 28, 48 and the associated dependent claims 29 and 60 are allowable for reasons of record as presented in applicant's remarks, filed on 18 July 2007, especially pages 21-22.
8. Independent claims 1, 12, 45 and 46 and the associated dependent claims 2-11, 13-20, 53, 59 are allowable for reasons of record as presented in applicant's remarks, filed on 18 July 2007, especially pages 15-19.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Boosalis whose telephone number is 571-272-2447. The examiner can normally be reached on Monday thru Friday from 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Porta can be reached on 571-272-2444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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